Supreme Court, U.S.
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No. 80-325

SUPREME COURT OF THE UNITED STATES

October Term, 1980

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner

v.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion delivered in the court is officially reported as Knight v. Radomski, Me., 414 A.2d 1211 (1980). The opinion delivered in the Maine Superior Court is appended to the Petition for Writ of Certiorari.

JURISDICTION

Respondents respectfully submit this Court does not have jurisdiction to hear the instant case. Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1257 (3).

Petitioner's argument is based exclusively upon the allegation that Maine's guardianship statutes, as construed by Maine courts to prohibit a mentally incompetent ward from marrying without his

guardian's consent or without a court modification of the terms of the guardianship violate federal constitutional guarantees of equal protection, due process and privacy.

The constitutionality of the statute, the sole federal question petitioner would present to this court, was not raised before, preserved nor passed upon by Maine courts. Under such circumstances, this Court has refused to decide federal constitutional questions. Cardinale v. Louisiana, 394 U.S. 437 (1969); Hill v. California, 401 U.S. 797 (1971); Estate of Wilson v. Aiken Industries, 439 U.S. 877 (1978).

In Cardinale v. Louisiana, 394 U.S. 437 (1969), a writ of certiorari was

granted to determine the constitutionality of a Louisiana statute requiring confessions used as evidence at trial to be introduced in their entirety. When at oral argument it became apparent that the issue had not been raised or considered below, the court dismissed the writ for lack of jurisdiction.

This Court also noted sound policy reasons for the rule:

> Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Id. at 439.

Respondent submits those policies are fully as applicable here.

Maine law likewise precludes appellate consideration of issues not preserved below. Younie v. State, Me., 281 A.2d 446 (1971), (citing Cardinale v. Louisiana, supra); Teel v. Colson, Me., 396 A.2d 529 (1979); Reville v. Reville, Me., 289 A.2d 695 (1972).

> . . . a party who seeks to raise an issue for the first time at the appellate level is held, in legal effect, to have "waived" the issue insofar as he utilizes it to attack a judgment already entered and from which an appeal is taken; therefore, appellate review will be denied to such question. . . . This principle is controlling notwithstanding that the issue pertains to an alleged violation of the Constitution of the United States. Reville v. Reville, supra, at 697.

Under Rule 21.1 (h) U.S. Sup. Ct. R., petitioner must indicate in his petition the manner in which the federal questions sought to be reviewed were raised, the method of raising them and the way they were passed upon by the court, and include pertinent quotations of specific portions of the record and specific references to the places in the record where the matter appears in order to "show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on a writ of certiorari."

Petitioner utterly fails to comply with this Rule. On the contrary, petitioner merely claims, without more, that she raised the constitutionality of the subject statutes in her motion to dismiss the

complaint in the trial court, at trial, during appeal and at oral argument on respondent's appeal.

Furthermore, petitioner's claims are totally false. Respondents categorically deny the issue was raised below. (Petitioner did move to dismiss the complaint in the trial court, by motion dated June 10, 1979, in which she argued that allowing a guardian ". . . whose authority has not ripened through a final order of the Court, and whose appointment as guardian has in fact been appealed . . . to interfere with the fundamental right of his putative ward to marry. . . Annulment of this marriage <u>without a prior determination of his competency</u> would violate William A. Knight's fundamental con-

stitutional rights . . ." (emphasis added) The motion did not request a ruling on the constitutionality of Maine's guardianship statutes per se, particularly since William B. Knight had in fact been appointed permanent guardian before the marriage and hence a prior determination of the guardian's competency had been made.)

See petitioner's MOTION TO DISMISS, AFFIRMATIVE DEFENSE, AND ANSWER TO AMENDED COMPLAINT in Appendix A. (Petitioner's Motion to Dismiss, Affirmative Defense and Answer to the original complaint is substantially identical and is not included here for reasons of brevity.)

See also the opinions of the Maine Superior Court and Maine Supreme Judicial Court, which make no mention of a con-

stitutional claim, appended to petitioner's petition.

See also statements of issues to be presented at trial from petitioner's and respondents' pre-trial memoranda, excerpted in Appendix C and Appendix D.

Maine practice requires careful and thorough preparation of the statement of the issues in the pre-trial memorandum.

> The object of the memorandum is to expose the issues as counsel genuinely understand them at the time of the conference on the basis of investigation and consideration of the case that has been carried on since the pleading stage. A memorandum which is uninformative in this regard or does not supply the other information required by the rule should be subject to sanctions under Rule 16(e). R. Field, V. McKusick and L. Wroth Maine Civil Practice (1970) at 323.

The constitutional issues were not raised as petitioner claims. Therefore, respondents respectfully submit petitioner's petition should also be denied for a violation of Rule 21.5, requiring accuracy in the presentation of matters to the court.

QUESTION PRESENTED

Petitioner's statement of the question presented is substantially correct.

STATEMENT OF THE CASE

Petitioner misstates the case in several significant respects. A more complete and accurate statement is contained in the opinion of the Supreme Judicial Court of Maine in Knight v. Radomski, supra.

ARGUMENT

Respondents respectfully submit there are no "special and important reasons" for settling the question presented, as required by Rule 17.

I.

Petitioner's claim is based upon the purported unconstitutionality of Maine's guardianship statutes, specifically 18 M.R.S.A. §§3601, 3603, 3605 and 3607.

Title 18, M.R.S.A. was repealed in its entirety (including the four sections listed above) by the 109th Maine Leglisature, effective January 1, 1981. 1979 Me. Acts c. 540 §24-C.

The Maine Legislature simultaneously enacted the Maine Probate Code, an adaption of the Uniform Probate Code. 1979

Me. Acts. c. 540 §1. The Maine Probate Code, 18-A M.R.S.A., represents a complete revision of Maine's probate laws.

While the new probate code generally addresses the same topics as the repealed Title 18, the four provisions petitioner seeks to challenge here were completely rewritten in the new code.

Any future question regarding the rights of a guardian and ward regarding marriage of the ward will have to be analyzed in terms of the new Code. Any ruling by this Court on the constitutionality of the Maine statutes in question would be of limited significance insofar as it would relate to repealed statutes, and be of uncertain applicability to new statutes. Petitioner, who must demonstrate the

special and important reasons for hearing her appeal, has not drawn the court's attention to any other jurisdictions which have statutes similar to the repealed Maine statutes. Hence respondents respectfully submit any decision rendered by this court on petitioner's claim would be of limited significance, and, therefore, there are no special and important reasons for granting certiorari.

II.

Petitioner has misstated the holding of the Maine Supreme Judicial Court.

> The state interests cited by the court below are intended to control the marriages of mentally disabled adult wards due to perceived deleterious effects on their estates due to marrying. (Petitioner's brief at 17-18)

While the Maine court's decision does consider the economic consequences of marriage by adjudicated incompetents on their estates, its concerns are much broader:

> It should be emphasized that William B. Knight had been appointed guardian of the person as well as the property of Buzz Knight. The responsibilities of a guardian of the person include the full spectrum of responsibilities necessary to provide for the care and overall well-being of the ward, subject to the general superintendency of the court. Because the marriage of a ward can have great impact on matters for which the guardian of his person is responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved by the duly appointed guardian of his person. Knight v. Radomski, Me. 414 A.2d 1211, 1215-1216 (1980).

Petitioner's reliance upon Zablocki v. Redhail, 434 U.S. 374 (1978), is, therefore, misplaced. The Wisconsin statute attacked in that case was found to unconstitutionally abridge the plaintiff's right to marry, since it was based upon the effect of the marriage upon plaintiff's economic condition.

While the court in Zablocki, supra, did find a fundamental right to marry, it did not address the question of rights for minors or the mentally disabled. In a subsequent case, this court noted that conditioning a minor's right to marry upon parental consent is constitutional, given the minor's incapacity to make an informed and mature decision. Bellotti v. Baird,

443 U.S. 622, at 635-6 n. 13 reh. den. 444 U.S. 887 (1979).

There is a similarity in the status of minors and mental incompetents.

> . . . First, though minors do have constitutional rights, their rights are not coextensive with those of adults, partly because of their inability fully to exercise a mature, free choice. Consequently, the level of constitutional protection accorded to the right to marry in Redhail may not extend to the exercise of the right by children. In that case, although the interference is significant, the deprivation would not trigger heightened scrutiny because it would not infringe upon a protected right. Second, even if minors do have a constitutionally protected right to marry, the state is often held to have a valid interest in protecting youth in areas in which it could not "protect" adults, an interest which suffices to justify legislation impinging on the constitutional rights of minors. In both cases, the state

> depends on age as a surrogate for maturity. While such generalizations may be impermissible when the decision involves the exercise of a fundamental right such as the right to abortion, the marriage decision is clearly distinguishable because it can be postponed, unlike the urgent abortion decision. Note, Developments in the Law -- The Constitution and the Family, 93 Harv. L. Rev. 1156, 1258 (1980).

The mental incompetent can, similarly, exercise his choice to marry by altering his guardianship condition whenever his disability is removed.

For both minors and mental incompetents,

> . . . the interests the state seeks to achieve include the protection of the individual from his inability to choose rationally and maturely. The state could achieve this goal by requiring the incompetent's guardian, whose responsibilities parallel those

> of a minor's guardian, to give consent before permitting the ward to marry. Note, Developments in the Law, supra, at 1261.

Respondents therefore submit that no conflict exists between the decision of the Maine Supreme Court in Radomski v. Knight, supra, and prior holdings of this court.

CONCLUSION

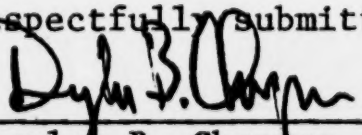
Respondents respectfully submit that this Court is without jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue not raised below.

Respondents further submit that petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted.

The decision below did not involve an important question of federal constitutional law which has not been, but should be, settled by this Court. The decision of the Maine Supreme Court in Knight v. Radomski, does, in fact, conform to the holdings of this Court. Respondents therefore respectfully contend the writ of certiorari should be denied.

Dated: September 24, 1980

Respectfully submitted:



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APPENDIX A

STATE OF MAINE HANCOCK, SS.	SUPERIOR COURT Civil Action, Docket No. 78-96
WILLIAM B. KNIGHT, in his capacity as Special Guardian of William Austin Knight and WILLIAM AUSTIN KNIGHT his ward Plaintiffs vs. JEAN T. RADOMSKI also known as JEAN T. KNIGHT Defendant	MOTION TO DISMISS, AFFIRMATIVE DEFENSE, AND ANSWER TO AMENDED COMPLAINT

MOTION TO DISMISS

NOW COMES the Defendant, Jean T. Radomski-Knight, by and through her attorney, Martha J. Harris, Esq., and moves to dismiss the Amended Complaint for the reason that it fails to state a claim upon which relief can be granted, and for the further

reasons that this Court has no jurisdiction over the parties or over the subject matter.

AFFIRMATIVE DEFENSE

As and for a first affirmative defense, the Defendant states that on March 29, 1978, the said William Austin Knight was fully capable of contracting marriage.

ANSWER AND AMENDED COMPLAINT

NOW COMES the Defendant, by and through her attorney, Martha J. Harris, Esq., and answers the Plaintiffs' Amended Complaint as follows:

FIRST COUNT

1. The Defendant states that the allegations contained in Paragraph 1 of the Plaintiffs' Amended Complaint are allegations of law requiring no answer.

2. The Defendant admits that William

B. Knight was appointed Special Guardian of William Austin Knight, but denies the allegations of statutory authority therefor.

3. The Defendant denies the allegations contained in Paragraph 3 of the Plaintiffs' Amended Complaint.

4. The Defendant admits that she is a resident of LaJunta, Otero County, Colorado, but states that the Defendant's name is Jean T. Radomski-Knight.

5. The Defendant admits only that Jean T. Radomski-Knight and William Austin Knight were married on March 28, 1978, but denies the remaining allegations contained in Paragraph 5 of the Plaintiffs' Amended Complaint.

6. The Defendant admits the allegations contained in Paragraph 6 of the

Plaintiffs' Amended Complaint.

7. The Defendant admits that on the 17th day of January, 1978, Douglas B. Chapman, Esq., attorney for the said William B. Knight, and Anthony J. Giunta, Esq., Guardian Ad Litem for the said William Austin Knight, stipulated as follows:

"That the said putative ward, William Austin Knight, was and is at all times material to this petition, incompetent to manage his own estate or to protect his rights by reason of mental incapacity," but states that the said William Austin Knight was unaware of said stipulation and that the said Defendant was unaware of said stipulation.

8. The Defendant denies the allega-

tions contained in Paragraph 8 of the Plaintiffs' Amended Complaint, and further states that preconditions to the appointment as temporary guardian were never met and preconditions for the permanent guardianship were not met on March 21, 1978. Further answering, the Defendant states that neither she nor William Austin Knight had notice or knowledge of any of the events alleged in Paragraphs 7 and 8 of the Plaintiffs' Amended Complaint.

9. The Defendant admits that William B. Knight did not consent to the marriage ceremony, but denies that he was Guardian of said William Austin Knight.

SECOND COUNT

10. The Defendant repeats and realleges her answers to Paragraphs 1 through

9 inclusive of the Plaintiffs' Amended Complaint as if set forth at length herein.

11. The Defendant denies the allegations contained in Paragraph 11 of the Plaintiffs' Amended Complaint.

THIRD COUNT

12. The Defendant repeats and realleges her answers to Paragraphs 1 through 11 inclusive of the Plaintiffs' Amended Complaint as if set forth at length herein.

13. The Defendant denies the allegations contained in Paragraph 13 of the Plaintiffs' Amended Complaint.

FOURTH COUNT

14. The Defendant repeats and realleges her answers to Paragraphs 1 through 13 inclusive of the Plaintiff's Amended Complaint as if set forth at length herein.

15. The Defendant denies the allegations contained in Paragraph 15 of the Plaintiffs' Amended Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of the Plaintiffs' Amended Complaint.

17. The Defendant denies the allegations contained in Paragraph 17 of the Plaintiffs' Amended Complaint.

FIFTH COUNT

18. The Defendant repeats and realleges her answers to Paragraph 1 through 9, 11, 13, 14, 15 and 16 of the Plaintiffs' Amended Complaint inclusive as if set forth at length herein.

19. The Defendant denies the allegations contained in Paragraph 19 of the Plaintiffs' Amended Complaint.

WHEREFORE, the Defendant prays that the Plaintiffs' Amended Complaint be dismissed and that the Defendant be awarded her costs and fees in this behalf incurred.

Dated at Bangor, Maine this 25th day of August, 1978.

Martha J. Harris, Esq.
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Attorney for Defendant
Eight Harlow Street
Bangor, Maine 04401

APPENDIX B

(Argument of petitioner, defendant below, excerpted from the brief to the Supreme Judicial Court of Maine, dated December 3, 1979)

. . . .

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APPENDIX C

(Statement of Issues from Plaintiff's and Defendant's pre-trial memoranda dated September 11, 1978 and September 27, 1978 respectively.)

PLAINTIFF'S PRE-TRIAL MEMORANDUM

. . . .

3. Statement of Issues:

a. Was the Defendant Jean T. Radomski already married at the time she attempted to marry the Plaintiff's ward, William Austin Knight.

b. Was the Plaintiff's ward, William Austin Knight, incompetent at the time of the putative marriage.

c. Did William B. Knight, as the Guardian of the Person of Plaintiff's ward, consent to the putative marriage.

d. Was the Plaintiff's ward a person under disability as defined by Title 19, Maine Revised Statutes, 1964, Section 32, as amended, at the time of the putative marriage and therefore, not capable of contracting marriage.

e. Was a Petition for the Appointment of a Guardian of the Plaintiff's ward pending in the Probate Court for Hancock County, Maine, at the time of the putative marriage.

f. Did the Defendant and Plaintiff's ward fail to follow the prerequisites of Title 19, Maine Revised Statutes, 1964, Section 61 and Section 62, as amended.

g. Did the Defendant Jean T. Radomski fraudulently procure any certificate or license necessary for said putative marriage issued by the City Clerk of Augusta, Maine, or the Probate Court for Kennebec County, Maine, for the putative marriage ceremony.

h. Was Plaintiff's ward a resident of Hancock County, Maine, at the time of said putative marriage.

i. Did the Plaintiff, Plaintiff's ward or Defendant apply to or obtain from the Clerk of the City of Ellsworth, Hancock County, Maine, a marriage license for said putative marriage of March 28, 1978.

j. Did the Plaintiff, Plaintiff's ward or Defendant apply to or obtain from any Judge of the Probate Court, the District Court or the Superior

Court in Hancock County, Maine, a certificate stating that in his opinion it was expedient for the intended putative marriage to be solemnized without delay.

k. Did the Judge of the Probate Court of Hancock County or any other Court conduct a hearing on the issue of whether or not it was expedient for the Plaintiff's ward and the Defendant's marriage to be solemnized without delay.

* * *

DEFENDANT'S PRE-TRIAL MEMORANDUM

. . . .

3. STATEMENT OF ISSUES: The Defendant adds to the Plaintiff's issues the following:

1. Whether the Plaintiff is precluded under Title 19, M.R. S.A. Section 632 from bringing this action.

APPENDIX D

(Statement of Issues from Defendant's Pre-trial Memorandum dated April 24, 1979. This is identical to Plaintiff's Statement of Issues except for the omitted discussion.)

. . . .

3.) Issues.

(A) Is William A. Knight competent to manage his own affairs.

[DISCUSSION]

(B) If William Austin Knight is determined to be incompetent, is William Beedle Knight qualified to be guardian of his funds.

[DISCUSSION]

(C) If William Austin Knight is determined to be incompetent, who would be the most appropriate

guardian of the person for him.

[DISCUSSION]

(D) Should the pending annulment action be heard in a bifurcated trial.

[DISCUSSION]